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FISCAL IMPACT STATEMENT

LS 7037

BILL NUMBER: HB 1195

NOTE PREPARED: Feb 7, 2007

BILL AMENDED: Feb 1, 2007

SUBJECT: Community Investment Tax Credits

FIRST AUTHOR: Rep. Crawford

FIRST SPONSOR: Sen. Dillon

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) The bill establishes a Community Investment Tax Credit against state tax liability for investments that: (1) qualify for a Federal New Markets Tax Credit; and (2) are made in a community development entity that agrees to reinvest 80% of its total assets in low income community businesses in Indiana.

Effective Date: January 1, 2008.

Explanation of State Expenditures: (Revised) *Department of State Revenue (DOR):* The DOR will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the new Community Investment Tax Credit. The Department's current level of resources should be sufficient to implement this change.

Indiana Economic Development Corporation (IEDC): The bill requires the IEDC to establish a program for accepting and reviewing applications for certifying Community Development Entities (CDEs) to obtain creditable equity investment; and for certifying equity investment in CDEs as qualified for the Community Investment Tax Credit. In addition, the bill requires certified community development entities (CDEs) to annually report to the IEDC on their programs. The bill requires CDEs to provide the IEDC with the annual report that is filed for federal reporting purposes with the Community Development Financial Institutions Fund. The bill also allows the IEDC to require additional information including: (1) information on state certified investments and federally qualified equity investments made by the entity in Indiana; (2) a description of each eligible business receiving an investment attributable to a state certified investment; (3) an update on the financial status of the eligible businesses; (4) an update on new jobs, increasing wages, total

investment, and revenue impact derived from the state certified investment; and (5) the sum of the state credits designated by the certified development entity. The bill requires this report to be submitted to the IEDC and the Legislative Services Agency.

The bill also requires the IEDC to provide an evaluation of the state credit program on a biennial basis. The bill requires the evaluation to include an assessment of: (1) the effectiveness of each certified development entity that receives a state certified investment in creating new jobs and increasing wages in Indiana; and (2) the revenue impact of the certified development entity's state credit program. The IEDC's current level of resources should be sufficient to fulfill these administrative tasks. The January 29, 2007, state vacant position table indicates that the IEDC has 32 vacant full-time positions.

Explanation of State Revenues: (Revised) *Summary:* This bill establishes the Community Investment Tax Credit for equity investment in CDEs that qualifies for the federal New Markets Tax Credit (NMTC) and is certified for the tax credit by the IEDC. The amount of credits that could potentially be claimed each year is indeterminable and depends on: (1) the number of CDEs qualifying for the federal NMTC; (2) the creditable investment amount allocated to these CDEs under the NMTC; and (3) the certifications of CDEs and state creditable investment by the IEDC. The credit applies only to qualified equity investment made after December 31, 2007, and can only be claimed beginning in tax year 2008. As a result of these circumstances, any fiscal impact from the credits likely would not arise before FY 2009.

Background Information: Investment Tax Credit: The nonrefundable tax credit is equal to 5% of the equity investment in a certified CDE held by a corporate or individual taxpayer, including a pass through entity, that is certified for the credit by the IEDC. The 5% credit applies for seven years beginning with the taxable year in which the investment is certified by the IEDC. Thus, the total credit on the equity investment is equal to 35%. The credit may be taken against the taxpayer's Adjusted Gross Income (AGI) Tax liability, Financial Institutions Tax liability, or Insurance Premiums Tax liability. The only equity investment that qualifies for the state credit is equity investment in a CDE that qualifies for the federal NMTC. The bill requires the IEDC to establish a program to certify CDEs that are qualified to receive the federal NMTC as state certified CDEs. The bill requires the IEDC to certify a federally qualified CDE as a state certified CDE if it:

(1) is qualified to receive equity investment that qualifies for the federal NMTC;

(2) commits in an agreement with the IEDC to continue to loan to or otherwise reinvest in low-income community businesses in Indiana for at least 7 years current with the federal credit period; and

(6) commits in an agreement with the IEDC to invest at least 80% of its aggregate gross assets (including reserves) in low-income community businesses.

The bill requires the IEDC to certify a federally qualified equity investment as a state certified investment only if: (1) a certified development entity designates the federally qualified equity investment for a state credit in a manner and on the designation form prescribed by the IEDC; and (2) the certified development entity that designates the qualified equity investment for a state credit is in compliance with the agreements entered into with the IEDC by the certified development entity.

The tax credit is nonrefundable, and unused credit amounts may not be carried back. However, a taxpayer may carry forward any unused credit amount for up to three subsequent taxable years. For pass through entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity. The bill provides that in the event federal NMTCs are disallowed or

recaptured by the IRS, the state credits for the same equity investment are terminated only to the extent the state credits are disallowed or recaptured by the IEDC.

Revenue from the AGI Tax on corporations, the Financial Institutions Tax, and the Insurance Premiums Tax is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund. Since the tax credit is effective beginning in tax year 2008 for certified investment made beginning in 2008, and requires IEDC certification, the fiscal impact likely would not begin before FY 2009.

Federal New Markets Tax Credit: Section 45D of the Internal Revenue Code (IRC) allows the federal New Markets Tax Credit (NMTC) for a taxpayer who holds a qualified equity investment in a community development entity (CDE) on the credit allowance date. A qualified equity investment means any equity investment in a qualified CDE if: (1) the investment is a cash investment; (2) substantially used by the CDE to make qualified low-income community investments; and (3) such investment is designated for the purposes of this code section by the CDE. The credit allowance date is the date on which the equity investment in the CDE is initially made, and six anniversary dates each year thereafter. For each of those dates the entity receives a federal tax credit for the equity investment. The credit provided to the investor totals 39% of the cost of the investment and is claimed over a 7-year credit allowance period. The credit is equal to 5% annually in the first three years, and 6% annually in the last four years.

A qualified CDE is defined as any domestic corporation or partnership with the primary mission of serving, or providing investment capital for, low-income communities or persons. The CDE must maintain accountability to residents of these low-income communities through representation on any governing board of the entity. These CDEs are also required under the IRC to be certified by the Treasury Secretary.

Since 2002, allocations of creditable investment under the NMTC have been awarded by the U.S. Department of Treasury. These allocations represent the amount of investments that were designated as qualifying for the NMTC. The total allocation for 2007 and 2008 is set at \$3.5 billion per year nationwide under Section 45D of the IRC. (Note: The NMTC was extended through 2008 under the federal Tax Relief and Health Care Act of 2006, signed on December 20, 2006.) The table below reports the creditable investment allocations made to CDEs headquartered in Indiana or national CDEs identifying Indiana as a part of its service area where it would principally focus its activities.

	Creditable Investment Allocations for NMTC	
Allocation Year	Indiana CDEs	National CDEs
2002	\$6 M	\$313 M
2003-04	\$75 M	\$15 M
2005	\$0	\$140 M
2006	\$0	\$321 M

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Indiana Economic Development Corporation; Legislative Services Agency.

Local Agencies Affected:

Information Sources: U.S. Department. of the Treasury, Community Development Financial Institutions Fund, <http://www.cdfifund.gov/programs/programs.asp?programID=5#2>.

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